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FISCAL IMPACT STATEMENT

LS 7595
BILL NUMBER: SB 341

NOTE PREPARED: Apr 10, 2003
BILL AMENDED: Apr 10, 2003

SUBJECT: Waiver of Preexisting Conditions.

FIRST AUTHOR: Sen. Miller
FIRST SPONSOR: Rep. C. Brown

BILL STATUS: 2nd Reading - 2nd House

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: (Amended) This bill provides that an individual policy of accident and sickness insurance or a group policy of accident and sickness insurance under which a certificate of coverage is issued to an individual member of a nonemployer-based association or discretionary group may contain a waiver of coverage for a specified condition under certain circumstances.

The bill specifies that an offer of coverage under a policy that includes a waiver does not preclude eligibility for an Indiana Comprehensive Health Insurance Association policy. The bill also requires reporting by insurers to the Department of Insurance and requires the Department of Insurance to submit a report to the Legislative Council.

Effective Date: July 1, 2003.

Explanation of State Expenditures: (Revised) This bill would allow for individual insurance policies, association group policies, and discretionary group policies that are issued or delivered after June 30, 2003, and that are not employer-based to include a waiver of coverage not exceeding two years in length. (Current statute provides for a maximum 12-month exclusion for preexisting conditions.) The insurer must provide to the applicant, prior to issuance of the policy, a notice that includes a specific description of each condition, complication, service, and treatment for which coverage is waived. In addition, the bill contains a provision that the insurer review the underwriting basis for the waiver one time per year upon request of the insured and remove the waiver if the insurer determines that evidence of insurability is satisfactory.

The waiver of coverage cannot be for coverage of a condition required under state law, for a mental health condition, or a developmental disability. In addition, the policy cannot include more than two waivers per

individual. The insurer is required to provide a description of each condition, complication, service, and treatment for which coverage is being waived. The insurer may not deny coverage for any condition, complication, service, or treatment that is not listed in the waiver.

The impact on the state, if any, is a potential decrease in demand for Indiana Comprehensive Health Insurance Association (ICHIA) policies. The impact upon the number of ICHIA policies issued will depend upon the number of people willing to forgo coverage for a waived condition in order to obtain regular insurance. However, this bill contains a provision that an individual may still purchase a policy under ICHIA even if they are offered a policy with a waiver of coverage. Dependent upon consumer choice, this bill may reduce the number of ICHIA policies issued, and thus reduce the amount of assessments and corresponding tax credits.

The Department of Insurance is required to create a data reporting form and compile data from insurance producers regarding waivers. This information shall include the number of policies that the insurer issued with a waiver, a list of specified conditions that the insurer waived, the number of waivers issued for each specified condition, the number of waivers issued categorized by the period of time for which coverage of a specified condition was waived, and the number of applicants who were denied insurance coverage by the insurer because of a specified condition. The Department will report this compiled information to the Legislative Council not later than November 1 of the reporting year. The cost of creating a form is assumed to be part of the administrative duties of the Department and can be accomplished at no additional cost. Cost of compiling and reporting information on waivers to the Legislative Council is negligible.

This bill includes an additional reporting requirement. Insurance companies are required to report the number of complaints and requests for external grievance reviews filed in relation to a waiver. The Commissioner of the Department of Insurance shall compile the information reported by insurers and report the information to the Legislative Council and each member of the General Assembly. This may increase the Department administrative expenses.

The bill allows out-of-state insurers, in states with insurance requirements that are the same as certain Indiana requirements, to issue association, discretionary group, or trust policies in Indiana. Current law requires only that the other state's requirements for association policies be similar to Indiana requirements. Consequently, this provision may reduce the number of associations that are able to purchase insurance policies. This in turn may increase enrollment in ICHIA if these members do not have access to health insurance elsewhere, which would tend to increase expenditures to the state.

Background: ICHIA is the high-risk insurance program offered by the state. ICHIA is funded through premiums paid by individuals obtaining insurance through ICHIA, by assessments to member companies (insurers, health maintenance organizations, and others that provide health insurance or health care coverage in Indiana), and the state General Fund. To be eligible, Indiana residents must show evidence of: (1) denied insurance coverage or an exclusionary rider; (2) one or more of the "presumptive" conditions such as AIDS, cystic fibrosis, or diabetes; (3) insurance coverage under a group, government, or church plan making the applicant eligible under the federal Health Insurance Portability and Accountability Act (HIPAA); or (4) exhausted continuation coverage (e.g., COBRA). Premium rates must be less than or equal to 150% of the average premium charged by the five largest individual market carriers.

The excess of expenses over premium and other revenue is made up by assessments on member insurance carriers. The Employee Retirement Income Security Act (ERISA) prevents assessments against self-funded insurance plans. Members may, in turn, (1) take a credit against Premium Taxes; or (2) include in the rates

for premiums charged for their insurance policies amounts sufficient to recoup the assessments.

Total expenses for the ICHIA program for CY 2001 were $93.1 M with premium contributions of $31.7 M and assessment receipts of $61.4 M. Enrollment in the ICHIA program as of August 2002 was 9,779. Beginning October 31, 2002, insurers are required to report the amount of assessments paid and tax credits taken each year. Data from CY 2001 is currently incomplete. However, preliminary data indicate that ICHIA assessments in 2001exceeded tax credits taken by approximately $10.3 M.

Explanation of State Revenues: (Revised) In addition, the bill makes a violation of the requirements for HMO grievance procedures an unfair and deceptive act and practice in the business of insurance. Violation of these requirements by an insurer may result in the levying of civil penalties. Civil penalties will be deposited in the state General Fund.

The civil penalties set forth for committing an unfair and deceptive act and practice in the business of insurance are $25,000 for each act or violation, or $50,000 for each act or violation if the person knew or reasonably should have known that they were in violation of this chapter. Total revenue is dependent upon the number of occurrences.

(See *Explanation of State Expenditures*, above, regarding the ICHIA program.)

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Indiana Comprehensive Health Insurance Association.

Local Agencies Affected:

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